



Senate Committee On
TRANSPORTATION

Jim Sebesta, Chair
Ron Klein, Vice Chair

Meeting Packet

Monday, April 19, 2004
1:45 p.m. – 3:45 p.m.
37 Senate Office Bldg.

***(Please bring this packet to the committee meeting.
Duplicate materials will not be available.)***

E X P A N D E D A G E N D A

COMMITTEE ON TRANSPORTATION

Senator Sebesta, CHAIR
Senator Klein, VICE-CHAIR

DATE: Monday, April 19, 2004
TIME: 1:45 p.m. -- 3:45 p.m.
PLACE: Room 37 (LL), Senate Office Building

(MEMBERS: Senators Alexander, Bullard, Clary, Geller, Lynn, Webster and Wise)

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 2572 Comprehensive Planning / Garcia (Compare H 0881)	Airport Zoning/Education Facilities; provides exceptions from certain airport zoning prohibitions for placement of educational facilities in certain counties; amends provisions to conform. Amends 333.03, 1013.36. CP 03/23/04 Not considered CP 03/29/04 CS ED 04/02/04 WITHDRAWN TR 04/19/04 RC	
2	SB 2030 Smith (Compare H 0307)	Driving or Boating Under Influence; revises level of alcohol content in blood or breath at which certain penalties shall apply for offense of driving under influence; revises level of alcohol content in blood or breath at which prohibition against accepting plea to lesser offense shall apply; revises level of alcohol content in blood or breath at which certain penalties shall apply for offense of boating under influence, etc. Amends 316.193, .656, 327.35; reenacts various FS. CJ 04/13/04 FAVORABLE WITH AMEND TR 04/19/04 RC	2
3	CS/SB 2472 Criminal Justice / Haridopolos (Similar H 1923)	Motor Vehicle Speed Competitions; defines "conviction"; specifies that offense applies to motor vehicles; revises penalties for violation of prohibitions against described motor vehicle speed competitions; provides for application of Florida Contraband Forfeiture Act. Amends 316.191. CJ 03/17/04 CS JU 04/12/04 FAVORABLE TR 04/19/04	

EXPANDED AGENDA

COMMITTEE ON TRANSPORTATION

DATE: Monday, April 19, 2004

TIME: 1:45 p.m. -- 3:45 p.m.

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/CS/SB 2480 Agriculture / Alexander et al (Similar H 1187, Compare CS/CS/1ST ENG/S 1526)	Agricultural Equipment Manufacturers; amends criteria for determining whether agric. equip. qualifies for exemption from limitations on maximum width & length; clarifies intent of Agricultural Equipment Manufacturers & Dealers Act to provide for regulation of conduct of manufacturers, distributors, & dealers of equip. primarily designed for or used in agric.; provides that it is unlawful to deny, delay payment for, or restrict warranty claims under certain circumstances, etc. Amends FS.	
		CM 03/16/04 CS	
		AG 03/24/04 CS/CS	
		TR 04/12/04 Temporarily postponed	
		TR 04/19/04	
Presentation of the Small Aircraft Transportation System Simulator			

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2572

SPONSOR: Comprehensive Planning Committee and Senator Garcia

SUBJECT: Airport Zoning

DATE: April 13, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CP	Fav/CS
2.		O'Farrell	ED	Withdrawn
3.	Eichin <i>KS</i>	Meyer <i>R. Meyer</i>	TR	
4.			RC	
5.				
6.				

I. Summary:

This committee substitute (CS) provides, for qualified counties, a less restrictive prohibition on the placement of educational facilities adjacent to or near airport facilities.

This CS amends sections 333.03 and 1013.36 of the Florida Statutes.

II. Present Situation:

Airports and Placement of Educational Facilities

Section 333.02, F.S., addresses airport hazards and uses of land in airport vicinities. Subsection (1) states, in part:

“...certain activities and uses of land in the immediate vicinity of airports ... are not compatible with normal airport operations, and may, if not regulated, also endanger the lives of the participants, adversely affect their health, or otherwise limit the accomplishment of normal activities.

Accordingly, this section declares:

- The creation or establishment of an airport hazard and the incompatible use of land in airport vicinities are public nuisances and injure the community served by the airport in question;
- It is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards and incompatible land uses be prevented; and

- This should be accomplished, to the extent legally possible, by the exercise of the police power, without compensation.

Section 333.03(1)(a), F.S., requires political subdivisions¹ to “adopt, administer, and enforce” airport zoning regulations for such airport hazard area. Subsection (2) requires political subdivisions to adopt development regulations (or an interim airport land use compatibility zoning regulations) which must consider a number of factors. If the airport authority has conducted a noise study,

“...neither residential construction nor any educational facility as defined in chapter 1013, with the exception of aviation school facilities, shall be permitted within the area contiguous to the airport defined by an outer noise contour that is considered incompatible with that type of construction by 14 C.F.R. part 150, Appendix A or an equivalent noise level as established by other types of noise studies.”

If the airport authority has not conducted a noise study, “neither residential construction nor any educational facility as defined in chapter 1013” may be permitted within an area contiguous to the airport “measuring one-half the length of the longest runway on either side of and at the end of each runway centerline.”

Subsection (3) requires airport zoning regulations must be adopted which restrict

“...new incompatible uses, activities, or construction within runway clear zones... Such regulations shall prohibit the construction of an educational facility of a public or private school at either end of a runway of a publicly owned, public-use airport within an area which extends 5 miles in a direct line along the centerline of the runway, and which has a width measuring one-half the length of the runway.”

However, an exemption may be granted for approving construction of an educational facility within the delineated area, but only after the political subdivision administering the zoning regulations “makes specific findings detailing how the public policy reasons for allowing the construction outweigh health and safety concerns prohibiting such a location.”

Section 1013.36, F.S., requires before acquiring property for sites, each district school board must determine the location of proposed educational centers or campuses, considering “existing and anticipated site needs and the most economical and practicable locations of sites.” However, subsection (3) provides such sites

“...must not be located within any path of flight approach of any airport...or other property from which noise, odors, or other disturbances, or at which conditions, would be likely to interfere with the educational program.”

¹ Political subdivision is defined in s. 333.01(9), F.S., as “any county, city, town, village, or other subdivision or agency thereof, or any district, port commission, port authority, or other such agency authorized to establish or operate airports in the state.”

III. Effect of Proposed Changes:

Section 1 amends s. 333.03(2) and (3), F.S., to provide, for qualified counties, a less restrictive prohibition on the placement of educational facilities adjacent to or near airport facilities.

Currently, paragraph (2)(d) states if the airport authority has not conducted a noise study, residential construction and educational facilities may be permitted within an area contiguous to the airport measuring one-half the length of the longest runway on either side of and at the end of each runway centerline.” However, this paragraph is amended to provide in “any county as defined in s. 125.011(1),”² such area shall measure one-fourth the length of the longest runway on either side of and at end of each runway centerline.

Likewise, subsection (3) requires airport zoning regulations must be adopted which restrict new incompatible uses, activities, or construction within runway clear zones. These regulations must prohibit the construction of an educational facility of a public or private school at either end of a runway of a publicly owned, public-use airport within an area which extends 5 miles in a direct line along the centerline of the runway, and which has a width measuring one-half the length of the runway. However, this subsection is amended to provide that “in any county as defined in s. 125.011(1)...” these regulations must prohibit this construction within an area which extends 2 miles in a direct line along the centerline of the runway, and which has a width measuring one-fourth the length of the runway.

Section 2 amends s.1013.36(3), F.S., to reference the less restrictive prohibition on the placement of educational facilities adjacent to or near airport facilities for qualified counties.

Section 3 provides this act shall take effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

² s. 125.011(1), F.S., provides that “County” means any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Currently, only Miami-Dade County qualifies under this definition.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2030

SPONSOR: Senator Smith

SUBJECT: Driving or Boating Under the Influence

DATE: April 15, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/2 amendments
2.	Davis <i>END</i>	Meyer <i>B. Meyer</i>	TR	
3.			RC	
4.				
5.				
6.				

I. Summary:

Senate Bill 2030 lowers the blood and breath alcohol level (BAL) for purposes of triggering driving under the influence (DUI) and boating under the influence (BUI) enhanced penalties from 0.20 or more to 0.16 or more. (Currently, the unlawful blood and breath alcohol level is 0.08 or more and the BAL for enhanced penalties is 0.20 or more.) This change makes the enhanced penalties apply when the BAL is twice the legal limit of DUI or BUI (0.16 is twice the legal limit of 0.08). (Enhanced penalties currently apply when a person is convicted of DUI or BUI with a BAL of 0.20 or more, or when a person is DUI or BUI and is accompanied by a passenger under the age of 18 years).

This bill substantially amends sections 316.193, 316.656, and 327.35, and reenacts the following sections of the Florida Statutes: 316.066, 316.072, 316.1932, 316.1933, 316.1934, 316.1937, 316.1939, 318.143, 318.17, 322.03, 322.0602, 322.21, 322.25, 322.26, 322.2615, 322.2616, 322.264, 322.271, 322.28, 322.282, 322.291, 322.34, 322.44, 322.62, 322.63, 322.64, 323.001, 327.35, 397.405, 440.02, 440.09, 493.6106, 627.758, 790.06, 903.36, 907.041, 938.07, 938.21, 938.23, 943.05, 948.03, 960.03, 327.352, 327.35215, 327.353, 327.354, 327.355, 327.359, 327.36 and 938.07.

II. Present Situation:

Section 316.193, F.S., proscribes driving under the influence of alcohol or drugs to the extent normal faculties are impaired or driving with a blood alcohol level of 0.08 or more grams of alcohol per 100 millimeters of blood or with a breath alcohol level of 0.08 or more grams of alcohol per 210 liters of breath (DUI). Similarly, s. 327.35, F.S., proscribes boating under the influence of alcohol or drugs to the extent normal faculties are impaired or operating a vessel with an unlawful blood or breath alcohol level of 0.08 or more (BUI). Penalties for DUI and BUI

vary according to the frequency of previous convictions, the offender's blood alcohol level (BAL) when arrested, and whether serious injury or death results.

Generally, modified misdemeanor penalties apply when there is no property damage or personal injury and when there are fewer than three DUI or BUI convictions. For example, a first-time offender is subject to a fine ranging from \$250 to \$500, as well as being subject to serving up to 6 months in county jail. He must also be on probation for up to 1 year and participate in 50 hours of community service.

However, if the first-time offender's BAL is 0.20 or more, or if a passenger under 18 years of age is present in the vehicle or vessel while the driver is DUI or BUI, the penalty is enhanced to a fine ranging from \$500 to \$1,000 and imprisonment not exceeding 9 months in jail.

A second DUI or BUI conviction carries a fine ranging from \$500 to \$1,000 and imprisonment for a period of up to 9 months. However, if that offense occurs within 5 years of a previous DUI or BUI conviction, there is a mandatory imprisonment period of at least 10 days. At least 48 hours of this confinement must be consecutive.

Enhanced penalties also apply when the second-time offender's BAL is 0.20 or more, or when a passenger under the age of 18 is present in the vehicle or vessel while the driver is DUI or BUI. These penalties require a fine ranging from \$1,000 to \$2,000, and imprisonment not exceeding 12 months.

A third or subsequent DUI or BUI conviction occurring more than 10 years after a prior conviction carries a fine ranging from \$1,000 to \$2,500 and possible imprisonment of up to 12 months. However, if that offense occurs within 10 years of a previous DUI or BUI conviction, it is a third degree felony, punishable by a minimum fine of \$1,000 but not exceeding \$5,000, and a term of imprisonment not to exceed 5 years. There is also a 30-day minimum mandatory imprisonment period. At least 48 hours of this confinement must be consecutive.

Enhanced penalties also apply when a third-time (or subsequent) offender's BAL is 0.20 or more, or when a passenger under the age of 18 is present in the vehicle or vessel while the driver is DUI or BUI. These penalties require a fine ranging from \$2,000 to \$5,000 and imprisonment not exceeding 12 months.

A fourth or subsequent DUI or BUI conviction is a third degree felony penalty, which is punishable by a minimum fine of \$1,000 but not exceeding \$5,000, and a term of imprisonment not to exceed 5 years.

Penalties for DUI or BUI based on Convictions

	Maximum Imprisonment	Incarceration Over .20 BAL or w/Minor	Fine	Fine Over .20 BAL or w/Minor
1st Offense	6 months jail	9 months jail	\$250-\$500	\$500-\$1,000
2nd Offense	9 months jail	12 months jail	\$500-\$1,000	\$1,000-\$2,000
3rd Offense more than	12 months jail	12 months jail	\$1,000-\$2,500	\$2,000-\$5,000

10 years after prior offense				
3rd Offense within 10 years or prior offense	5 years prison	5 years prison	\$1,000-\$5,000	\$1,000-\$5,000
4th Offense (3rd degree felony)	5 years prison	5 years prison	\$1,000-\$5,000	\$1,000-\$5,000

In addition, the placement of an ignition interlock device for up to six months is required for a first DUI offense and for up to two years for a second DUI offense where the person had a blood alcohol level in excess of .20.

If a DUI or BUI offense involves property damage, it is a first degree misdemeanor, punishable by a fine not exceeding \$1,000 and/or imprisonment up to 1 year in jail. A DUI or BUI offense involving serious injury is a third degree felony, punishable by a fine not exceeding \$5,000 and/or imprisonment up to 5 years. A DUI or BUI offense resulting in death is a second degree felony, punishable by a fine not exceeding \$10,000 and/or imprisonment up to 15 years.

Initially, when the Legislature provided enhanced DUI and BUI penalty provisions for persons with a BAL of 0.20 or more, the unlawful BAL for purposes of charging DUI or BUI was 0.10 or more, not 0.08 or more. The enhanced penalties were triggered when the BAL reached twice the legal limit (0.20 or more). When the Legislature later lowered the unlawful BAL to 0.08 or more, it did not also lower the BAL that triggered enhanced penalties from 0.20 to 0.16.

III. Effect of Proposed Changes:

Senate Bill 2030 would lower the blood and breath alcohol level for purposes of triggering DUI and BUI enhanced penalties from 0.20 or more to 0.16 or more. (Currently, the unlawful blood and breath alcohol level is 0.08 or more and the BAL for enhanced penalties is 0.20 or more.) This change would make the enhanced penalties apply when the BAL is twice the legal limit of DUI or BUI (0.16 is twice the legal limit of 0.08). (Enhanced penalties currently apply when a person is convicted of DUI or BUI with a BAL of 0.20 or more, or when a person is DUI or BUI and such person is accompanied by a passenger under the age of 18 years).

The bill would also reenact numerous sections that reference the statutes being amended for purposes of incorporating these changes into those sections of law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Under SB 2030, persons convicted of DUI or BUI with a BAL of 0.16 or more will be subject to the enhanced penalties that currently only apply when the BAL is 0.20 or more.

C. Government Sector Impact:

Because the number of persons convicted of DUI or BUI with a BAL between 0.16 and 0.20 cannot be ascertained, any positive impact on state and local revenues because of increased fines is indeterminate.

Senate Bill 2030 could impose an additional burden (indeterminate) on local jails if more offenders are sentenced to enhanced incarceration penalties of up to 12 months. The court system may also be impacted to the extent that a lower threshold for enhanced penalties may provide a greater incentive for an offender to use the courts to avoid such penalties.

The Criminal Justice Estimating Conference has not yet evaluated the fiscal impact of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Criminal Justice:

Requires the DHSMV to approve a DUI program provider to serve a county with fewer than 200 DUI convictions and no permanent satellite office, if the chief judge of the circuit recommends it. It also provides that the provider is not required to have a satellite office in each county in the circuit. (WITH TITLE AMENDMENT)

#2 by Criminal Justice:

Mandates the DHSMV to require the placement of an approved ignition interlock device on specified DUI offenders' vehicles prior to issuing such person a permanent or restricted driver's license. It also mandates the DHSMV to immediately require the device be installed if the court fails to so order such installation on an offender's vehicle. Finally, the amendment specifies the duration of each installation period based upon the number of DUI convictions. (WITH TITLE AMENDMENT)

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. SB 2030Amendment No. 1

444734

Senate

CHAMBER ACTION

House.
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The Committee on Criminal Justice recommended the following amendment:

Senate Amendment (with title amendment)

On page 73, between lines 6 and 7,

insert:

Section 53. Paragraph (c) of subsection (2) of section 322.292, Florida Statutes, is amended to read:

322.292 DUI programs supervision; powers and duties of the department.--

(2) The department shall adopt rules to implement its supervisory authority over DUI programs in accordance with the procedures of chapter 120, including the establishment of uniform standards of operation for DUI programs and the method for setting and approving fees, as follows:

(c) Implement procedures for the granting and revoking of licenses for DUI programs, including:

1. A uniform application fee not to exceed \$1,000 but in an amount sufficient to cover the department's administrative costs in processing and evaluating DUI program

Bill No. SB 2030Amendment No. 1

444734

1 license applications. The application fee shall not apply to
2 programs that apply for licensure to serve a county that does
3 not have a currently licensed DUI program or where the
4 currently licensed program has relinquished its license.

5 2. In considering an application for approval of a DUI
6 program, the department shall determine whether improvements
7 in service may be derived from the operation of the DUI
8 program and the number of clients currently served in the
9 circuit. The department shall apply the following criteria:

10 a. The increased frequency of classes and availability
11 of locations of services offered by the applicant DUI program.

12 b. Services and fees offered by the applicant DUI
13 program and any existing DUI program.

14 c. The number of DUI clients currently served and
15 historical trends in the number of clients served in the
16 circuit.

17 d. The availability, accessibility, and service
18 history of any existing DUI program services.

19 e. The applicant DUI program's service history.

20 f. The availability of resources, including personnel,
21 demonstrated management capability, and capital and operating
22 expenditures of the applicant DUI program.

23 g. Improved services to minority and special needs
24 clients.

25 3. Authority for competing applicants and currently
26 licensed DUI programs serving the same geographic area to
27 request an administrative hearing under chapter 120 to contest
28 the department's determination of need for an additional
29 licensed DUI program in that area.

30 4. A requirement that the department revoke the
31 license of any DUI program that does not provide the services

Bill No. SB 2030Amendment No. 1

444734

1 specified in its application within 45 days after licensure
2 and notify the chief judge of that circuit of such revocation.

3 5. A requirement that all applicants for initial
4 licensure as a DUI program in a particular circuit on and
5 after the effective date of this act must, at a minimum,
6 satisfy each of the following criteria:

7 a. Maintain a primary business office in the circuit
8 which is located in a permanent structure that is readily
9 accessible by public transportation, if public transportation
10 is available. The primary business office must be adequately
11 staffed and equipped to provide all DUI program support
12 services, including registration and a file for each person
13 who registers for the program.

14 b. Have a satellite office for registration of DUI
15 offenders in each county in the circuit which is located in a
16 permanent structure that is readily accessible by public
17 transportation, if public transportation is available. A
18 satellite office is not required in any county where the total
19 number of DUI convictions in the most recent calendar year is
20 less than 200. In a county where the total number of DUI
21 convictions in the most recent calendar year is fewer than 200
22 and no satellite office is located in a permanent structure in
23 that county, another program provider, upon the recommendation
24 of the chief judge of the judicial circuit of that county,
25 shall be approved by the department to serve the county and
26 the provider is not required to have a satellite office in
27 each county in the circuit.

28 c. Have a classroom in each county in the circuit
29 which is located in a permanent structure that is readily
30 accessible by public transportation, if public transportation
31 is available. A classroom is not required in any county where

Bill No. SB 2030Amendment No. 1

444734

1 the total number of DUI convictions in the most recent
2 calendar year is less than 100. A classroom may not be located
3 within 250 feet of any business that sells alcoholic
4 beverages. However, a classroom shall not be required to be
5 relocated when a business selling alcoholic beverages locates
6 to within 250 feet of the classroom.

7 d. Have a plan for conducting all DUI education
8 courses, evaluation services, and other services required by
9 the department. The level I DUI education course must be
10 taught in four segments, with no more than 6 hours of
11 classroom instruction provided to any offender each day.

12 e. Employ at least 1 full-time certified addiction
13 professional for the program at all times.

14 f. Document support from community agencies involved
15 in DUI education and substance abuse treatment in the circuit.

16 g. Have a volunteer board of directors and advisory
17 committee made up of citizens who reside in the circuit in
18 which licensure is sought.

19 h. Submit documentation of compliance with all
20 applicable federal, state, and local laws, including, but not
21 limited to, the Americans with Disabilities Act.

22
23 (Redesignate subsequent sections.)
24
25

26 ===== T I T L E A M E N D M E N T =====

27 And the title is amended as follows:

28 On page 2, line 6, after the semicolon,
29

30 insert:

31 amending s. 322.292, F.S.; requiring the

Bill No. SB 2030Amendment No. 1

444734

1 Department of Highway Safety and Motor Vehicles
2 to approve a DUI program provider to serve a
3 county with fewer than 200 DUI convictions and
4 no permanent satellite office under certain
5 specified conditions; providing that the DUI
6 program provider is not required to have a
7 satellite office in each county in the circuit;
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Bill No. SB 2030Amendment No. 2

251838

CHAMBER ACTION

SenateHouse.
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The Committee on Criminal Justice recommended the following amendment:

Senate Amendment (with title amendment)

On page 73, between lines 6 and 7,

insert:

Section 53. Section 322.2715, Florida Statutes, is created to read:

322.2715 Ignition interlock device.--

(1) Before issuing a permanent or restricted driver's license under this chapter, the department shall require the placement of a department-approved ignition interlock device for any person convicted of committing an offense of driving under the influence as specified in subsection (3). An interlock device shall be placed on all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person.

(2) For purposes of this section, any conviction for a violation of s. 316.193, a previous conviction for a violation of former s. 316.1931, or a conviction outside this state for

Bill No. SB 2030Amendment No. 2

251838

1 driving under the influence, driving while intoxicated,
2 driving with an unlawful blood alcohol level, or any other
3 similar alcohol-related or drug-related traffic offense is a
4 conviction of driving under the influence.

5 (3) If the person is convicted of:

6 (a) A first offense of driving under the influence
7 under s. 316.193 and has an unlawful blood alcohol level or
8 breath alcohol level as specified in s. 316.193(4), or if a
9 person is convicted of a violation of s. 316.193 and was at
10 the time of the offense accompanied in the vehicle by a person
11 under the age of 18 years, the person shall have the ignition
12 interlock device installed for 6 months for the first offense
13 and for at least 2 years for a second offense.

14 (b) A second offense of driving under the influence,
15 the ignition interlock device shall be installed for a period
16 of not less than 1 year.

17 (c) A third offense of driving under the influence
18 which occurs within 10 years after a prior conviction for a
19 violation of s. 316.193, the ignition interlock device shall
20 be installed for a period of not less than 2 years.

21 (d) A third offense of driving under the influence
22 which occurs more than 10 years after the date of a prior
23 conviction, the ignition interlock device shall be installed
24 for a period of not less than 2 years.

25 (4) If the court fails to order the mandatory
26 placement of the ignition interlock device or fails to order
27 for the applicable period the mandatory placement of an
28 ignition interlock device under s. 316.193 or s. 316.1937 at
29 the time of imposing sentence or within 30 days thereafter,
30 the department shall immediately require that the ignition
31 interlock device be installed as provided in this section.

Bill No. SB 2030Amendment No. 2

251838

This section applies to the reinstatement of the driving
privilege from a revocation, suspension, or cancellation based
upon an offense of driving under the influence which occurs on
or after July 1, 2004.

(Redesignate subsequent sections.)

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

On page 2, line 6, after the semicolon,

insert:

creating s. 322.2715, F.S.; directing the
Department of Highway Safety and Motor Vehicles
to require placement of a department-approved
ignition interlock device on specified vehicles
operated by any person convicted of committing
certain driving-under-the-influence offenses;
specifying the duration of each installation
period based upon the number of DUI
convictions; directing the department to
require installation of the ignition interlock
if the court fails to order the mandatory
placement of the device or fails to order
placement for the applicable period;

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2472

SPONSOR: Criminal Justice Committee and Senator Haridopolos

SUBJECT: Motor Vehicle Speed Competitions

DATE: April 14, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Fav/CS
2.	Brown	Lang	JU	Favorable
3.	Davis <i>EW</i>	Meyer <i>Boyer</i>	TR	
4.				
5.				
6.				

I. Summary:

This committee substitute (CS) increases the offense of racing on highways from a second degree misdemeanor to a first degree misdemeanor for a first offense, and from a first degree misdemeanor to a third degree felony for a second offense within five years.

The CS defines conviction to include a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld, and provides for forfeiture of a motor vehicle used in committing the offense. The CS limits its application to the operation of motor vehicles.

This CS substantially amends section 316.191, of the Florida Statutes.

II. Present Situation:

Racing on Highways

Section 316.191, F.S., prohibits persons from driving a vehicle on a highway, roadway, or parking lot in a race, speed competition, drag race, test of physical endurance, exhibition of speed or acceleration, or attempt to set a speed record. Persons are also prohibited from any manner of participation in such activities, including coordinating, facilitating, collecting money, riding as a passenger, or slowing or stopping traffic.

Specifically, s. 316.191(1)(a), F.S., defines the term "drag race" as "the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of such vehicle or vehicles within a certain distance or time limit."

Section 316.191(1)(b), F.S., defines the term “racing” as “the uses of one or more vehicles in an attempt to outgain, outdistance, or prevent another vehicle from passing, to arrive at a given destination ahead of another vehicle or vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes.”

Section 316.003(75), F.S., defines the term “vehicle” to include “every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary wheels or tracks.” In addition to automobiles and other motor vehicles, this definition embraces non-motorized vehicles such as bicycles and tricycles.

The first commission of a violation of s. 316.191, F.S., is a second degree misdemeanor, which can result in imprisonment for up to 60 days. In addition, the statute requires a fine in an amount between \$250-\$500, and revocation of the offender’s driver license for 1 year.

A second violation within 5 years after the date of the prior conviction is a first degree misdemeanor, punishable by imprisonment for up to 1 year. In addition, the mandatory fine must be no less than \$500 nor more than \$1000, and the offender’s driver license is to be revoked for 2 years.

In addition to the above criminal and administrative penalties, the court may order impoundment or immobilization of the vehicle as a condition of incarceration or probation. The law provides for the impounding agency to release the vehicle to the registered owner as provided in s. 316.193(6)(e), (f), (g), and (h), F.S. These are cases in which the vehicle was stolen, was lawfully purchased after the offense, is the sole means of transportation for the owner’s family, or was owned by the defendant but used solely by the defendant’s employees or by a business owned by the defendant.

Florida Contraband Forfeiture Act

Sections 932.701-932.707, F.S., contain the Florida Contraband Forfeiture Act. A contraband article includes an enumerated controlled substance, gambling paraphernalia, equipment used in violation of the beverage or tobacco laws, motor fuel upon which the tax has not been paid, real property, and:

Any personal property, including, but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind...which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony....¹

Further, section 932.702, F.S., provides that it is unlawful:

To conceal, or possess, or use any contraband article as an instrumentality in the commission of or in aiding or abetting in the commission of any felony or violation of the Florida Contraband Forfeiture Act.²

¹ s. 932.701(2)(a), F.S.

² s. 932.702(4), F.S.

The Act authorizes seizure and forfeiture for contraband articles that are used in violation of the Florida Contraband Forfeiture Act. Immediately upon seizure, all rights to, interest in, and title to contraband articles vest in the seizing law enforcement agency.³ Personal property may be seized at the time of the violation, or later, if the person is provided proper notice that there is a right to an adversarial preliminary hearing to determine probable cause that the property has been used in contravention of the Act. Should the court determine probable cause, a seizure, or continued seizure is ordered.⁴

In a separate forfeiture proceeding, the seizing agency must establish by a preponderance of the evidence that the owner either knew, or should have known after a reasonable inquiry, that the property was employed or likely to be employed in criminal activity. In the case of joint ownership, prior to forfeiture, a seizing agency is required to show by a preponderance of the evidence that the co-owner knew, or should have known, after reasonable inquiry, that the property was employed or likely to be employed in criminal activity.⁵

An owner whose property is subject to forfeiture has the right to a jury trial.⁶ The burden of proof in a forfeiture case is clear and convincing evidence. Where the claimant prevails, the property is returned immediately, and reasonable attorney's fees and costs are awarded.⁷

III. Effect of Proposed Changes:

The CS amends ss. 316.191(1), F.S., to provide a definition of the term "conviction," to increase the penalty for violation of the statute, and to provide a motor vehicle used in commission of the offense is subject to forfeiture.

"Conviction" is defined to include a determination of guilt resulting from a trial or a plea, regardless of whether adjudication is withheld. This is the same definition of conviction that is found in s. 921.0011(2), F.S., and used in determining whether an offense is scored for purposes of sentencing under the Criminal Punishment Code. The definition makes it clear that a person has been convicted of this offense even if adjudication is withheld. This is significant in applying the penalty enhancement provisions for a second violation within 5 years of a prior conviction.

The CS also amends ss. 316.191(1) and (2), F.S., to restrict application of the statute to the operation of motor vehicles, rather than the broader class of all vehicles.

The CS increases the offense from a second degree misdemeanor to a first degree misdemeanor. The mandatory fine is increased from a range of \$250-\$500 to \$500-\$1000. A second violation within 5 years of a prior conviction is increased from a first degree misdemeanor to a third degree felony, with a maximum imprisonment term of five years. The mandatory fine range is increased from \$500-\$1000 to \$1000-\$5000.

³ s. 932.703(1), F.S.

⁴ s. 932.703(2), F.S.

⁵ s. 932.703(5) and (7), F.S.

⁶ s. 932.704(3), F.S.

⁷ s. 932.704(9) and (10), F.S.

The CS also creates a new s. 316.191(4), F.S., providing any motor vehicle used in committing the offense may be seized and forfeited pursuant to the Florida Contraband Forfeiture Act (ss. 932.701-932.707, F.S.)

Seizure and forfeiture are limited to those cases in which a second, or subsequent, violation is charged as it does not apply, in any case, to misdemeanors.

The CS has an effective date of October 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The increased fines and provision for seizure and forfeiture of motor vehicles can be expected to have a negative economic impact upon offenders. According to the Department of Highway Safety and Motor Vehicles (department), the average yearly rate of convictions for racing on a public traffic way is 4,098.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not yet analyzed the impact of the CS, but it is unlikely that increase of the second offense to an unranked third degree felony would have an impact. However, the department notes the CS may generate additional revenues for local government as a result of increasing penalties for violations involving racing on a highway.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 2480

SPONSOR: Agricultural Committee; Commerce, Economic Opportunities, and Consumer Services Committee; Senators Alexander and Lynn

SUBJECT: Agricultural Equipment Manufacturers

DATE: April 1, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula/Maclure	Maclure	CM	Fav/CS
2.	Weidenbenner	Poole	AG	Fav/CS
3.	Eichin <i>KS</i>	Meyer <i>R Meyer</i>	TR	
4.				
5.				
6.				

I. Summary:

The committee substitute for the committee substitute for senate bill 2480 (CS/CS) revises the uniform traffic laws to permit certain agriculture equipment to qualify for the exemption from the limitations on maximum width and length. It expands the types of businesses governed by the provisions of the Farm Equipment Manufacturers and Dealers Act (Act). Currently, the act regulates the contractual relationships between a tractor or farm equipment dealer that sells farm implements which are primarily for use in agriculture and its manufacturer, distributor, or wholesale suppliers. The provisions of the CS/CS will make the act applicable to the contractual relationships between a dealer of tractors, farm implements, and items including irrigation equipment primarily for use in commercial agriculture or horticulture and its suppliers. It also excludes from the definition of a dealer a mass-market retailer. In addition, the measure provides the act does not apply to machinery primarily designed for, or used in, off-road construction, mining, or industrial non-agricultural purposes.

New provisions of the act as amended by the CS/CS:

- Allow agricultural tractors and other towed or self-propelled farming equipment certain exemptions from maximum width, height, and length restrictions when used on public highways.
- Make it unlawful for a dealer's supplier to withhold payment of funds owed to a dealer.
- Prohibit a dealer's supplier from conducting audits of warranty claims more than 1 year after the claims were paid and require audits of incentives and rebates paid to a dealer to take place within 6 months after the end of an incentive program.
- Require a dealer's suppliers to provide 180-days notice to the dealer that a competing dealer will be located in the existing dealer's relevant market area.

- Require a commission of 8% of the sales price to be paid to the dealer by the manufacturer, for dealer preparation and delivery when equipment is sold by the manufacturer directly to the consumer.
- Provide franchise agreements may only be terminated for failure to meet marketing or market-penetration criteria with advance notice to the dealer of at least 1 year and 90 days.
- Prohibit a dealer's suppliers from imposing unreasonable restrictions on the location, transfer, and site control of a dealer.
- Make it unlawful for a manufacturer, distributor, or wholesaler to prohibit a dealer from selling competing product lines.

Provisions of existing law have the effect of making the provisions of the CS/CS applicable to contracts in existence before the effective date of the CS/CS.

This CS/CS substantially amends the following sections of the Florida Statutes: 316.515, 686.40, 686.401, 686.402, 686.403, 686.405, 686.406, 686.407, 686.409, 686.413 and 686.418.

II. Present Situation:

Presently, agricultural tractors and agricultural implements are not specifically described as being a type of vehicle that can exceed the maximum width and length limitations contained in the uniform traffic laws.

The Act, codified in ss. 686.40-686.418, F.S., regulates the contractual relationship between a tractor or farm equipment dealer and manufacturers, distributors, and wholesalers of tractors and farm equipment. The act applies to all agreements between a tractor or farm equipment dealer and its suppliers of tractors and farm equipment that have no expiration date and to contracts entered into or renewed after July 1, 1984.¹

Definitions

Under the act, a tractor or farm equipment dealer is "a person who sells, solicits, or advertises the sale of new and used tractors and farm equipment to the consuming public."² A manufacturer is a "person engaged in the business of manufacturing or assembling new and unused tractors and farm equipment."³ A distributor or wholesaler is a "person, firm, association, corporation, or company that sells or distributes new tractors and farm equipment to tractor or farm equipment dealers."⁴ "Farm equipment" means those farm implements which are primarily designed for use in agriculture."⁵

Warranty Service

¹ 686.403(2) and (3), F.S. The effective date of the act was July 1, 1984.

² Section 686.402(16), F.S.

³ Section 686.402(11), F.S.

⁴ Section 686.402(1), F.S.

⁵ Section 686.402(6), F.S.

According to the act, when a tractor or farm equipment dealer satisfies warranty claims by providing parts or services, the dealer must be paid within 30 days by the manufacturer, distributor, or wholesaler.⁶ The minimum lawful payment for a dealer's warranty work is the dealer's established retail hourly rate times the amount of time required to complete the work.⁷ The minimum lawful payment to a dealer for parts used for warranty work is the dealer's cost for the parts, plus shipping and handling charges, plus 15 percent of the cost of the parts and shipping charges.⁸

Returned Parts

Manufacturers and distributors must allow dealers to annually return for credit at least 6 percent of the dollar value of the parts purchased by the dealer during the prior year.⁹ A dealer must be credited with at least 85 percent of the wholesale cost of the returned parts.¹⁰

Repurchased Inventory

Within 60 days after the termination of a franchise agreement between a tractor or farm equipment dealer and a manufacturer or distributor, the manufacturer or distributor must offer to repurchase the dealer's inventory.¹¹ For new tractors and other complete equipment, the dealer must be paid 100 percent of the dealer's cost plus freight, less a reasonable allowance for depreciation.¹² For repair parts, the dealer must be paid 85 percent of the wholesale cost, plus an additional 6 percent for the dealer's costs to return the parts.¹³

Franchise Agreement Termination

A manufacturer or distributor may not without due cause fail to renew a franchise on terms then equally available to all of its tractor or farm equipment dealers, terminate a franchise, or restrict the transfer of a franchise unless the franchisee receives fair and reasonable compensation for the inventory of the business.¹⁴ A dealer must be notified in writing of the intent to terminate a franchise or selling agreement at least 90 days before the effective date of the termination of the agreement.¹⁵ The notice must also state the grounds for termination. A court may enjoin the termination of a franchise or selling agreement which was made without due cause.¹⁶

Under s. 686.413(3)(c)2., F.S., a manufacturer or distributor has due cause to terminate or refuse to renew a franchise agreement if the dealer:

⁶ Section 686.405(2)(a), F.S.

⁷ Section 686.405(3)(a), F.S.

⁸ Section 686.405(3)(b), F.S.

⁹ Section 686.406(3)(c), F.S.

¹⁰ Section 686.406(3)(e), F.S.

¹¹ Section 686.407, F.S.

¹² Section 686.407(2)(a), F.S.

¹³ Section 686.407(2)(b), F.S.

¹⁴ Section 686.409, F.S.

¹⁵ Section 686.413(3)(c)1., F.S.

¹⁶ *Id.*

- a. Has transferred an ownership interest in the dealership without the manufacturer's or distributor's consent;
- b. Has made a material misrepresentation in applying for or in acting under the franchise agreement;
- c. Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against her or him which has not been discharged within 60 days after the filing, is in default under the provisions of a security agreement in effect with the manufacturer or distributor, or is in receivership;
- d. Has engaged in unfair business or trade practices;
- e. Has inadequately represented the manufacturer's or distributor's products with respect to sales, service, or warranty work;
- f. Has inadequate and insufficient sales and service facilities and personnel;
- g. Has failed to comply with an applicable federal, state, or local licensing law;
- h. Has been convicted of a crime, the effect of which would be detrimental to the manufacturer, distributor, or dealership;
- i. Has failed to operate in the normal course of business for 10 consecutive business days or has terminated her or his business;
- j. Has relocated her or his place of business without the manufacturer's or distributor's consent; or
- k. Has failed to comply with the terms of the dealership or franchise agreement.

Unfair Competition and Unfair or Deceptive Acts or Practices

The act also defines and prohibits numerous unfair methods of competition and unfair or deceptive acts or practices.¹⁷

Legal Remedies

A contract or franchise agreement or a provision of a contract or agreement in violation of the act is unenforceable.¹⁸ Additionally, a person who is harmed as the result of a violation of the act may bring an action in circuit court for damages, including punitive damages in some cases, and attorney's fees.¹⁹ The act may also be enforced by the Department of Legal Affairs or by a state attorney.²⁰

III. Effect of Proposed Changes:

Scope of Act

The CS/CS adds agricultural tractors, agricultural implements attached to a towing unit, or self-propelled agricultural implements to the types of equipment that can qualify for the exemption from the limitations on maximum width and length.

¹⁷ Section 686.413, F.S.

¹⁸ Section 686.415, F.S.

¹⁹ Section 686.417(1) and (4), F.S.

²⁰ Section 686.417(5), F.S.

The CS/CS renames the Farm Equipment Manufacturers and Dealers Act (Act) as the Agricultural Equipment Manufacturers and Dealers Act.

The CS/CS expands the application of the act by deleting the word “farm”²¹ from the defined term “farm equipment” as it is used throughout the act. Further, the definition of “farm equipment,” now “equipment” under the CS/CS, includes items primarily designed for use in agriculture²² or horticulture,²³ including irrigation equipment. Additionally, the defined term “tractor or farm equipment dealer” becomes “dealer” under the CS/CS. A “dealer” is “a person who sells, solicits, or advertises the sale of new and used equipment to the consuming public or who maintains such equipment.” As such, any duty under the act owed by a manufacturer or distributor to a tractor or farm equipment dealer is owed to a person or entity that meets the expanded definition of dealer under the CS/CS. The CS/CS specifies, however, a dealer does not include a mass-market retailer. In addition, through the definition of the term “equipment,” the measure provides that the act does not apply to machinery primarily designed for, or used in, off-road construction, mining, or industrial non-agricultural purposes.

Definitions

The CS/CS adds the terms “dealership,” “relevant market area,” and “termination” to the definitions section of the act.

Payments to Dealers

The CS/CS makes it unlawful for a manufacturer or distributor to deny, delay payment for, or restrict a claim by a dealer for warranty service or parts, incentives, hold-backs, or other amounts owed to a dealer.

Audits of Dealers

The CS/CS requires a manufacturer, distributor, or wholesaler that conducts audits of warranty claims submitted by a dealer to conduct the audit within 1 year after paying the claims. A dealer may only be charged back the amount of claims paid that are shown by an audit to be invalid. However, a dealer may be charged back for a fraudulent claim after the one-year period. Audits of the incentives or rebates paid to a dealer must be conducted within 6 months after the end of the incentive compensation program. Audits of the incentives paid to a dealer may take place after the 6 month period in the case of fraud.

Repurchased Parts

²¹ As used in s. 823.14, F.S., the Florida Right to Farm Act, the term “‘Farm’ means the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products.”

²² As used in the state’s agricultural laws, the term “‘Agriculture’ means the science and art of production of plants and animals useful to humans, including to a variable extent the preparation of these products for human use and their disposal by marketing or otherwise, and includes aquaculture, horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bees, and any and all forms of farm products and farm production.” Section 570.02(1), F.S.

²³ Horticulture is “the science and art of growing fruits, vegetables, flowers, or ornamental plants.” Merriam-Webster’s Collegiate Dictionary 559 (10th ed. 2001).

Under current law, a repair part with a limited storage life is exempt from the items that a manufacturer or distributor must purchase from a dealer when the dealer's franchise agreement terminates. Under the CS/CS, repair parts with a limited storage life must be purchased upon the termination of a franchise agreement.

Notice of Competing Dealerships

When a manufacturer, distributor, or wholesaler decides to establish a new dealership or relocate an existing dealership into the relevant market area of an existing dealership, the dealer must be provided with at least 180-days written notice.

Dealer Preparation and Delivery Fee

When a manufacturer, distributor, or wholesaler directly sells an item of equipment in a dealer's territory, the dealer should, if practical, be used to prepare and deliver the equipment. The dealer must be paid at least 8 percent of the sale price of the equipment for the preparation and delivery of the equipment.

Franchise Agreement Termination

Under existing law, a dealer must be provided with at least 90-days notice before a franchise or selling agreement may be terminated. Under the CS/CS, a dealer must be provided with at least 180-days notice. Furthermore, the CS/CS prohibits the termination of a franchise or selling agreement if a dealer cures the deficiency for which the agreement is to be terminated during the 180-day notice period. If the termination of a franchise or selling agreement is sought because a dealer has failed to meet marketing or market-penetration criteria, the dealer must be provided with notice of the intent to terminate the agreement at least 1 year before the termination. During the 1-year period, the manufacturer or entity issuing the notice must make good faith efforts to assist the dealer to gain market share. If the termination of the selling or franchise agreement continues to be sought after the 1-year notice period, the dealer must be provided with an additional 90-days notice before the effective date of the termination of the agreement. The notice must specify the reasons for the determination the dealer failed to meet marketing or market-penetration criteria. If the dealer cures the deficiency in the 90-day notice period, the agreement may not be cancelled. Additionally, a dealer may seek an injunction against the unlawful termination of an agreement for failure to meet marketing or market-penetration criteria.

Unfair Competition and Unfair or Deceptive Acts or Practices

The CS/CS provides the following acts by a manufacturer, distributor, or wholesaler are unlawful:

- Imposing unreasonable restrictions on the dealer relative to transfer, renewal, termination, location, or site control; and
- Preventing a dealer from having an investment in or holding a dealership contract for the sale of competing product lines or requiring a dealer to provide separate facilities for competing product lines.

The CS/CS makes other grammatical and technical changes to the act.

The CS/CS provides an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The application of the CS/CS to contracts in effect before the effective date of the CS/CS is likely unconstitutional under the Contracts Clause of s. 10, Art. I., State Constitution.

Section 10, Art. I, State Constitution, states: “No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.” This constitutional provision prohibits the retroactive application of laws that impair contractual obligations.²⁴

Under s. 686.403(3), F.S., the provisions of the CS/CS will apply retroactively to a contract between a dealer and a manufacturer, distributor, or wholesaler which was executed before the effective date of the CS/CS. Section 686.403(3), F.S., states:

Sections 686.40-686.418[, the sections that comprise the Farm Equipment Manufacturers and Dealers Act,] apply to all continuing contracts now in effect which have no expiration date and to all other contracts entered into or renewed after July 1, 1984.

Section 10 of the CS/CS, which amends s. 686.413(3)(c)1., F.S., contains an example of a provision that is likely an unconstitutional impairment of a contract. In the existing s. 686.413(3)(c)1., F.S., a manufacturer, distributor, or wholesaler must give a dealer at least 90-days notice before a franchise agreement with the dealer may be terminated for cause. The CS/CS extends the 90-day period to at least 180 days. By operation of s. 686.403(3), F.S., the 180-day notice requirement will apply to contracts in effect before the effective date of the CS/CS.

²⁴ See, e.g., *Geary Distributing Co., Inc., v. All Brand Importers, Inc.*, 931 F. 2d 1431 (11th Cir. 1991).

In *Yamaha Parts Distributors, Inc., v. Ehrman*, 316 So. 2d 557 (Fla. 1975), Yamaha entered into a 5-year franchise agreement with U-Cycle on April 30, 1970.²⁵ The agreement provided that it could be terminated with 30-days written notice to either party.²⁶ On June 12, 1974, Yamaha terminated the agreement.²⁷ On January 1, 1971, however, s. 320.641, F.S., became effective and required a motor vehicle manufacturer to give a franchisee at least 90-days notice before a franchise agreement could be terminated.²⁸ U-Cycle sought to enjoin the termination of the franchise agreement at least in part because Yamaha did not comply with the statutory 90-day notice requirement.²⁹ The court determined that s. 320.641, F.S., which required 90-days written notice before termination, applied prospectively because retroactive application of the statute to the franchise agreement would be an unconstitutional impairment of a contract.³⁰

Because the issues in *Yamaha* are directly analogous to the issues raised by the CS/CS, the application of the provisions of the CS/CS to contracts in effect before the effective date of the CS/CS is likely unconstitutional. As a result, the Legislature may wish to amend the CS/CS to make its provisions applicable only to contracts or contract renewals executed after the effective date of the CS/CS.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Because the CS/CS expands the types of dealers that may be protected under the Farm Equipment Manufacturers and Dealers Act, the contractual relationships between more dealers and their suppliers may be governed by the act.

Provisions of the CS/CS may enhance the degree of economic security in their business relationships with suppliers for those equipment dealers who are covered by the act, such as the provisions:

- i. Making it unlawful for a dealer's supplier to withhold payment of funds owed to a dealer;
- ii. Requiring a dealer's suppliers to provide 180-days notice to the dealer that a competing dealer will be located in the existing dealer's relevant market area;
- iii. Providing that franchise agreements may only be terminated for failure to meet marketing or market-penetration criteria with advance notice to the dealer of at least 1 year and 90 days;

²⁵ *Yamaha Parts Distributors, Inc., v. Ehrman*, 316 So. 2d 557, 558 (Fla. 1975).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 559.

iv. Prohibiting a dealer's suppliers from imposing unreasonable restrictions on the location, transfer, and site control of a dealer; and
Making it unlawful for a manufacturer, distributor, or wholesaler to prohibit a dealer from selling competing product lines.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for CS for SB 2480

Amendment No. 1



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CHAMBER ACTION

SenateHouse

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Senator Alexander moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 686.40, Florida Statutes, is amended to read:

686.40 Agricultural Farm Equipment Manufacturers and Dealers Act, ~~short title.~~ Sections 686.40-686.418 shall be known by the popular name ~~and may be cited as~~ the "Agricultural Farm Equipment Manufacturers and Dealers Act."

Section 2. Subsection (1) of section 686.401, Florida Statutes, is amended to read:

686.401 Legislative finding and intent; construction
of ss. 686.40-686.418.--

(1) The Legislature finds and declares that the distribution and sale of ~~tractors-and-farm~~ equipment primarily designed for or used in agriculture in this state vitally affects the general economy of the state, the public interest, and the public welfare and that, in the exercise of its police

Bill No. CS for CS for SB 2480

Amendment No. 1  323454

1 power, it is necessary to regulate the conduct of ~~tractor-and~~
2 ~~farm-equipment~~ manufacturers, distributors, and dealers of
3 such equipment, and their representatives, doing business in
4 this state in order to prevent fraud, unfair business
5 practices, unfair methods of competition, impositions, and
6 other abuses upon its citizens.

7 Section 3. Section 686.402, Florida Statutes, is
8 amended to read:

9 686.402 Definitions of terms used in ss.
10 686.40-686.418.--In construing ss. 686.40-686.418, unless the
11 context otherwise requires, the word, phrase, or term:

12 (1) (16) "Tractor-or-farm-equipment Dealer" means a
13 person who sells, solicits, or advertises the sale of new and
14 used ~~tractors-and-farm~~ equipment to the consuming public, or
15 who maintains such equipment, but does not include:

16 ~~(a)--A-receiver,-trustee,-administrator,-executor,-~~
17 ~~personal-representative,-guardian,-or-other-person-appointed~~
18 ~~by-or-acting-under-judgment,-decree,-or-order-of-any-court-~~

19 (a) (b) A public officer while performing her or his
20 duties as such officer.

21 (b) (e) A person making casual or isolated sales of her
22 or his own ~~tractors-or-items-of-farm~~ equipment not subject to
23 sales tax under the laws of this state.

24 (c) (d) A person engaged in the auction sale of
25 ~~tractors-and-farm~~ equipment.

26 (d) (e) A dealer in used ~~tractors-and-farm~~ equipment.

27 (e) A mass-market retailer.

28 (2) "Dealership" means the business of selling or
29 attempting to effect the sale by a dealer of new equipment or
30 the right conferred by written or oral agreement with the
31 manufacturer, distributor, or wholesaler, for a definite or

Bill No. CS for CS for SB 2480

Amendment No. 1

323454

1 indefinite period of time, to sell or attempt to effect the
2 sale of new equipment.

3 (3)(1) "Distributor" or "wholesaler" means any person,
4 firm, association, corporation, or company that sells or
5 distributes new ~~tractors-and-farm~~ equipment to ~~tractor-or-farm~~
6 ~~equipment~~ dealers and that maintains distributor
7 representatives within this state.

8 (4)(2) "Distributor branch" means a branch office
9 maintained by a distributor or wholesaler which sells or
10 distributes new ~~tractors-and-farm~~ equipment to ~~tractor-or-farm~~
11 ~~equipment~~ dealers.

12 (5)(3) "Distributor representative" means a
13 representative employed by a distributor, distributor branch,
14 or wholesaler.

15 (6) "Farm Equipment" means those tractors, farm
16 implements, or items which are primarily designed for or used
17 use in agriculture. Equipment designed for or used in off-road
18 construction, forestry, mining, utility, and industrial
19 purposes is not included in this definition.

20 (7)(4) "Factory branch" means a branch office
21 maintained by a manufacturer which manufactures and assembles
22 ~~tractors-and-farm~~ equipment for sale to distributors of
23 ~~tractors~~ or ~~to-farm-equipment~~ dealers or which is maintained
24 for directing and supervising the representatives of the
25 manufacturer.

26 (8)(5) "Factory representative" means a representative
27 employed by a manufacturer or factory branch for the purpose
28 of making or promoting the sale of ~~tractors-and-farm~~ equipment
29 or for supervising, servicing, introducing, or contracting
30 with ~~tractor-or-farm-equipment~~ dealers or prospective dealers.

31 (9)(7) "Franchise" means a contract or agreement,

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1 either expressed or implied, whether oral or written, for a
2 definite or indefinite period of time in which a manufacturer,
3 distributor, or wholesaler grants to a ~~tractor-or-farm~~
4 ~~equipment~~ dealer permission to use a trade name, service mark,
5 trademark, or related characteristic and in which there is a
6 common interest or community of interest in the marketing of
7 ~~tractors-or-farm~~ equipment or services related thereto at
8 wholesale or retail, whether by leasing, sale, or otherwise.

9 ~~(10)~~(8) "Franchisee" means a ~~tractor-or-farm-equipment~~
10 dealer to whom a franchise is offered or granted.

11 ~~(11)~~(9) "Franchisor" means a manufacturer,
12 distributor, or wholesaler who grants a franchise to a ~~tractor~~
13 ~~or-farm-equipment~~ dealer.

14 ~~(12)~~(10) "Fraud" means and includes actual fraud or
15 constructive fraud as normally defined, in addition to the
16 following:

17 (a) A misrepresentation in any manner, whether
18 intentionally false or arising from gross negligence, of a
19 material fact.

20 (b) A promise or representation not made honestly and
21 in good faith.

22 (c) An intentional failure to disclose a material
23 fact.

24 (d) Any artifice employed to deceive another.

25 ~~(13)~~(11) "Manufacturer" means any person engaged in
26 the business of manufacturing or assembling new and unused
27 ~~tractors-and-farm~~ equipment.

28 ~~(14)~~(12) "New ~~tractor-or-farm~~ equipment" means a
29 ~~tractor-or item-of-farm~~ equipment which has not been
30 previously sold to and put into regular use or service by any
31 person, except a distributor, wholesaler, or ~~tractor-or-farm~~

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1 equipment dealer for resale.

2 (15){+3} "Person" means a natural person, corporation,
3 association, partnership, trust, or other business entity and,
4 in the case of a business entity, includes any other entity in
5 which the business entity has a majority interest or which it
6 effectively controls, as well as the individual officers,
7 directors, and other persons in active control of the
8 activities of each such entity.

9 (16) "Relevant market area" means the geographic area
10 for which a dealer is assigned responsibility for selling or
11 soliciting or advertising the sale of equipment under the
12 terms of a franchise.

13 (17){+4} "Sale" means and includes the issuance,
14 transfer, agreement for transfer, exchange, pledge,
15 hypothecation, or mortgage in any manner or form, whether by
16 transfer in trust or otherwise, of any ~~tractor-or-item-of-farm~~
17 equipment or interest therein, or of any franchise related
18 thereto, for a consideration and any option, subscription or
19 other contract, or solicitation, looking to a sale, or offer
20 or attempt to sell in any form, whether in oral or written
21 form for a consideration.

22 (18) "Termination" means the termination,
23 cancellation, nonrenewal, or noncontinuation of a contract or
24 agreement.

25 (19){+5} "Tractor" means a vehicle that is operated
26 principally upon a farm, grove, or orchard in connection with
27 agricultural or horticultural pursuits or in connection with
28 irrigation.

29 Section 4. Section 686.403, Florida Statutes, is
30 amended to read:

31 686.403 Application of ss. 686.40-686.418.--

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1 (1) Any person who engages directly or indirectly in
2 purposeful agreements or contracts within this state in
3 connection with the sale or advertising for sale of new
4 equipment tractors-and-farm-machinery and parts is subject to
5 ss. 686.40-686.418 and to the jurisdiction of the courts of
6 this state for violations of such sections in accordance with
7 the provisions of the laws of this state.

8 (2) Sections 686.40-686.418 apply to all written or
9 oral agreements between a manufacturer, distributor, or
10 wholesaler with a tractor-or-farm-equipment dealer, including,
11 but not limited to, the franchise offering; the franchise
12 agreement; sales of goods, services, and advertising; leases
13 or mortgages of real or personal property; promises to pay;
14 security interests; pledges; insurance contracts; advertising
15 contracts; construction or installation contracts; servicing
16 contracts; and all other such agreements in which the
17 manufacturer, distributor, or wholesaler has any direct or
18 indirect interest.

19 (3) Sections 686.40-686.418 apply to all continuing
20 contracts now in effect which have no expiration date and to
21 all other contracts entered into or renewed after July 1,
22 1984.

23 Section 5. Section 686.405, Florida Statutes, is
24 amended to read:

25 686.405 Warranty agreements; claims; compensation of
26 dealers.--

27 (1) Every manufacturer, distributor, wholesaler,
28 factory branch or division, distributor branch or division, or
29 wholesale branch or division shall provide a fair and
30 reasonable warranty agreement on any new tractor-or-item-of
31 farm equipment which it sells and shall fairly compensate each

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1 of its ~~tractor-or-farm-equipment~~ dealers for labor and parts
2 used in fulfilling such warranty agreements.

3 (2) (a) Each claim for payment under such warranty
4 agreements made by a ~~tractor-or-farm-equipment~~ dealer for such
5 labor and parts shall be paid within 30 days following its
6 approval. Each such claim shall be either approved or
7 disapproved within 30 days after its receipt. When any such
8 claim is disapproved, the ~~tractor-or-farm-equipment~~ dealer who
9 submitted it shall be notified in writing of such disapproval
10 within such period, and such notice shall state the specific
11 grounds upon which the disapproval is based.

12 (b) Any special handling of claims required of the
13 dealer by the manufacturer, distributor, wholesaler, factory
14 branch or division, distributor branch or division, or
15 wholesale branch or division, which handling is not uniformly
16 required of all dealers of that make, may be enforced only
17 after 30 days' notice in writing to the dealer and upon good
18 and sufficient reason.

19 (3) (a) The minimum lawful basis for compensating a
20 dealer for warranty work, as provided for in this section,
21 shall be calculated for labor in accordance with the
22 reasonable and customary amount of time required to complete
23 such work, expressed in hours and fractions of hours
24 multiplied by the dealer's established hourly retail labor
25 rate. Prior to filing a claim for reimbursement for warranty
26 work, the dealer must notify the applicable manufacturer,
27 distributor, or wholesaler of his or her hourly retail labor
28 rate.

29 (b) The minimum lawful basis for compensation to the
30 dealer for parts used in fulfilling such warranty work shall
31 be at the dealer's costs for such parts, including all freight

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1 and handling charges applicable to such parts, plus 15 percent
2 of the sum of such costs and charges to reimburse the dealer's
3 reasonable cost of doing business and providing such warranty
4 service on behalf of the manufacturer.

5 (4) It shall be unlawful to deny, delay payment for,
6 or restrict a claim by a dealer for warranty service or parts,
7 incentives, hold-backs, or other amounts owed to a dealer
8 unless the denial, delay, or restriction is the direct result
9 of a material defect in the claim that affects its validity.

10 (5) A manufacturer, distributor, or wholesaler may
11 audit warranty claims submitted by its dealers only for a
12 period of up to 1 year following payment of such claims and
13 may charge back to its dealers only those amounts based upon
14 paid claims shown by the audit to be invalid. However, this
15 limitation shall not apply in any case of fraudulent claims.

16 (6) Any audit of a dealer by or on behalf of a
17 manufacturer, distributor, or wholesaler for sales incentives,
18 service incentives, rebates, or other forms of incentive
19 compensation shall be completed not later than 12 months after
20 the date of termination of such incentive compensation
21 program. However, this limitation shall not apply in any case
22 of fraudulent claims.

23 Section 6. Section 686.406, Florida Statutes, is
24 amended to read:

25 686.406 Parts; availability; return.--

26 (1) Every manufacturer shall specify, and every dealer
27 shall provide and fulfill, reasonable predelivery and
28 preparation obligations for its ~~tractors-and-farm~~ equipment
29 prior to delivery of the ~~tractors-and~~ equipment to retail
30 purchasers.

31 (2) Every manufacturer shall provide for the

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1 availability of repair parts throughout the reasonable useful
2 life of any ~~tractor-or-farm~~ equipment sold.

3 (3) Every manufacturer or distributor shall provide to
4 each of its ~~her-or-his~~ dealers, annually, an opportunity to
5 return a portion of its ~~their~~ surplus parts inventories for
6 credit. The surplus procedure shall be administered as
7 follows:

8 (a) The manufacturer or distributor may specify, and
9 thereupon notify each of its ~~her-or-his~~ dealers of, a time
10 period of at least 60 days' duration during which each of its
11 ~~the~~ dealers may submit its ~~their~~ surplus parts list ~~lists~~ and
12 return the ~~their~~ surplus parts to the manufacturer or
13 distributor.

14 (b) If a manufacturer or distributor has not notified
15 a dealer of a specific time period for returning surplus parts
16 within the preceding 12 months, the manufacturer or
17 distributor ~~she-or-he~~ shall authorize and allow the dealer's
18 surplus parts return request within 30 days after receipt of
19 such request from such the dealer.

20 (c) A manufacturer or distributor must allow surplus
21 parts return authority on a dollar value of parts equal to 6
22 percent of the total dollar value of parts purchased from the
23 manufacturer or distributor by the dealer during the 12-month
24 period immediately preceding the notification to such the
25 dealer by the manufacturer or distributor of the surplus parts
26 return program, or the month such the dealer's return request
27 is made, whichever is applicable. However, the dealer may, at
28 her or his option, elect to return a dollar value of her or
29 his surplus parts equal to less than 6 percent of the total
30 dollar value of parts purchased by such the dealer from the
31 manufacturer or distributor during the preceding 12-month

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1 period as provided herein.

2 (d) No obsolete or superseded part may be returned,
3 but any part listed in the manufacturer's, distributor's, or
4 wholesaler's current returnable parts list at the date of
5 notification of the surplus parts return program by the
6 manufacturer or distributor to the dealer, or the date of the
7 dealer's parts return request, whichever is applicable, is
8 eligible for return and credit specified. However, returned
9 parts must be in new and unused condition and must have been
10 purchased from the manufacturer, distributor, or wholesaler to
11 whom they are returned.

12 (e) The minimum lawful credit to be allowed for
13 returned parts is 85 percent of the wholesale cost of the
14 parts as listed in the manufacturer's, distributor's, or
15 wholesaler's current returnable parts list at the date of the
16 notification of the surplus parts return program by the
17 manufacturer, wholesaler, or distributor to the dealer, or the
18 date of the dealer's parts return request, whichever is
19 applicable.

20 (f) Applicable credit must be issued or furnished by
21 the manufacturer or distributor to the dealer within 60 days
22 after receipt of her or his returned parts.

23 (g) The packing and return freight expense incurred in
24 any return of surplus parts pursuant to the terms of this
25 section shall be borne by the dealer.

26 Section 7. Section 686.407, Florida Statutes, is
27 amended to read:

28 686.407 Repurchase of inventory upon termination of
29 franchise agreement; establishment or relocation of
30 dealership; sale or lease of new equipment.--

31 (1) Whenever any ~~tractor-or-farm-equipment~~ dealer

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1 enters into a franchise agreement with a manufacturer,
2 distributor, or wholesaler in which agreement the dealer
3 agrees to maintain an inventory of ~~tractors~~--farm equipment,
4 or repair parts and the franchise is subsequently terminated,
5 the manufacturer, distributor, or wholesaler shall repurchase
6 the inventory as provided in this section. However, the dealer
7 may keep the inventory if he or she desires. If the dealer has
8 any outstanding debts to the manufacturer, distributor, or
9 wholesaler, then the repurchase amount may be credited to the
10 dealer's account.

11 (2) If the dealer decides not to keep the inventory,
12 the manufacturer, distributor, or wholesaler shall repurchase
13 that inventory previously purchased from such manufacturer,
14 distributor, or wholesaler ~~him-or-her~~ and held by the dealer
15 on the date of termination of the contract. The manufacturer,
16 distributor, or wholesaler shall pay:

17 (a) One hundred percent of the actual dealer cost,
18 including freight, of all new, unsold, undamaged, and complete
19 ~~tractors--or-other-items-of-farm~~ equipment which is ~~are~~
20 resalable, less a reasonable allowance for depreciation due to
21 usage by the dealer and deterioration directly attributable to
22 weather conditions at the dealer's location; and

23 (b) Eighty-five percent of the current wholesale price
24 of all new, unused, and undamaged repair parts and accessories
25 which are listed in the manufacturer's, distributor's, or
26 wholesaler's current returnable parts list. The manufacturer,
27 distributor, or wholesaler shall also pay the dealer 6 percent
28 of the current wholesale price on all new, unused, and
29 undamaged repair parts returned to cover the cost of handling,
30 packing, and loading. However, the manufacturer, distributor,
31 or wholesaler shall have the option of performing the

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1 handling, packing, and loading in lieu of paying the 6-percent
2 sum imposed in this subsection for these services; and, in
3 this event, after receipt by the dealer of the full repurchase
4 amount as provided in this section, the dealer shall make
5 available to the manufacturer, distributor, or wholesaler, at
6 the dealer's address or at the places at which the tractors
7 and equipment is are located, all ~~tractors-and-items-of-farm~~
8 equipment previously purchased by the dealer.

9 (3) Upon payment within a reasonable time of the
10 repurchase amount to the dealer, the title and right of
11 possession to the repurchased inventory shall transfer or be
12 transferred to the manufacturer, distributor, or wholesaler,
13 as the case may be.

14 (4) The provisions of this section do not require the
15 repurchase from a dealer of:

16 ~~(a)--Any-repair-part-which-has-a-limited-storage-life~~
17 ~~or-is-otherwise-subject-to-deterioration-~~

18 (a)~~(b)~~ Any single repair part which is priced as a set
19 of two or more items.

20 (b)~~(c)~~ Any repair part which because of its condition
21 is not resalable as a new part without repackaging or
22 reconditioning.

23 (c)~~(d)~~ Any inventory for which the dealer is unable to
24 furnish evidence, reasonably satisfactory to the manufacturer,
25 distributor, or wholesaler, of good title, free and clear of
26 all claims, liens, and encumbrances.

27 (d)~~(e)~~ Any inventory which the dealer desires to keep,
28 if the dealer has a contractual right to keep it.

29 (e)~~(f)~~ Any ~~tractor-or-item-of-farm~~ equipment which is
30 not in new, unused, undamaged, and complete condition.

31 (f)~~(g)~~ Any ~~tractor-or-item-of-farm~~ equipment which has

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1 been used by the dealer or has deteriorated because of weather
2 conditions at the dealer's location unless the manufacturer,
3 distributor, or wholesaler receives a reasonable allowance for
4 such usage or deterioration.

5 (g)~~(h)~~ Any repair parts which are not in new, unused,
6 and undamaged condition.

7 (h)~~(i)~~ Any inventory which was ordered by the dealer
8 on or after the date of receipt of the notification of
9 termination of the franchise or contractual agreement.

10 (i)~~(j)~~ Any inventory which was acquired by the dealer
11 from any source other than the manufacturer, distributor, or
12 wholesaler.

13 (5) If any manufacturer, distributor, or wholesaler
14 fails or refuses to repurchase any inventory covered under the
15 provisions of this section within 60 days after termination of
16 a dealer's contract, he or she is civilly liable for 100
17 percent of the current wholesale price of the inventory plus
18 any freight charges paid by the dealer, such the dealer's
19 reasonable attorney's fees, court costs, and interest on the
20 current wholesale price computed at the legal interest rate
21 provided in s. 687.01 from the 61st day after termination.

22 (6) A manufacturer, distributor, or wholesaler that
23 intends to establish a new dealership or to relocate a current
24 dealership for a particular product line or make of equipment
25 within the relevant market area of an existing dealership of
26 the same product line or make of equipment shall give written
27 notice of such intent by certified mail or overnight delivery,
28 return receipt requested, to such existing dealership. The
29 notice shall be delivered at least 180 days prior to
30 establishment of a new dealership or relocation of a current
31 dealership. The notice shall include:

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1 (a) The specific location of the additional or
2 relocated dealership.

3 (b) The date on or after which the additional or
4 relocated dealership will commence operation at the new
5 location.

6 (c) The identity of all existing dealerships in whose
7 relevant market area the new or relocated dealership is to be
8 located.

9 (d) The names and addresses of the dealer and
10 principals in the new or relocated dealership.

11 (7) A manufacturer, distributor, or wholesaler may
12 lease new equipment for use within the state. If the
13 manufacturer, distributor, or wholesaler makes a direct sale
14 or lease of equipment, he or she shall pay to the dealer a
15 commission of not less than 7 percent of the sale or lease
16 price of the equipment. This payment shall cover any
17 compensation to the dealer for the cost of customary
18 preparation and delivery as well as any commission on the sale
19 or lease. This compensation must be paid or credited in the
20 same manner as provided in this section. The manufacturer,
21 distributor, or wholesaler, if practicable, shall utilize the
22 dealer in the relevant market area for preparation and
23 delivery. For purposes of this subsection, equipment is
24 considered to be used primarily within a dealer's relevant
25 market area if the new equipment is located or housed at a
26 user's facility located within the relevant market area. This
27 subsection shall not be applicable to any liquidation or sale
28 of equipment which has been ordered by any court.

29 Section 8. Section 686.409, Florida Statutes, is
30 amended to read:

31 686.409 Compensation for inventory upon refusal to

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1 renew, termination of, or restriction on transfer of a
2 franchise.--It is unlawful for the manufacturer, distributor,
3 wholesaler, or franchisor, without due cause, to fail to renew
4 a franchise on terms then equally available to all of its her
5 ~~or-his-tractor-or-farm-equipment~~ dealers, to terminate a
6 franchise, or to restrict the transfer of a franchise unless
7 the franchisee receives fair and reasonable compensation for
8 the inventory of the business. As used in this section, the
9 term "due cause" shall be construed in accordance with the
10 definition of due cause contained in s. 686.413(3)(c)2.

11 Section 9. Section 686.413, Florida Statutes, is
12 amended to read:

13 686.413 Unlawful acts and practices.--Unfair methods
14 of competition and unfair or deceptive acts or practices in
15 the conduct of the manufacturing, distribution, wholesaling,
16 franchising, sale, and advertising of ~~tractors-and-farm~~
17 ~~equipment~~ are declared to be unlawful.

18 (1) It is deemed a violation of this section for any
19 manufacturer, factory branch, factory representative,
20 distributor, distributor branch, distributor representative,
21 wholesaler, or ~~tractor-or-farm-equipment~~ dealer to engage in
22 any action which is arbitrary, capricious, in bad faith, or
23 unconscionable and which causes damage in terms of law or
24 equity to any of the parties or to the public.

25 (2) It is deemed a violation of this section for a
26 manufacturer, factory branch or division, distributor,
27 distributor branch or division, wholesaler, or wholesale
28 branch or division, or officer, agent, or other representative
29 thereof, to coerce, compel, or attempt to coerce or compel any
30 ~~tractor-or-farm-equipment~~ dealer:

31 (a) To order or accept delivery of any ~~tractor-or-item~~

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1 of farm equipment, parts or accessories therefor, or other
2 commodity or commodities which such ~~tractor-or-farm-equipment~~
3 dealer has not voluntarily ordered.

4 (b) To order or accept delivery of any ~~tractor-or-farm~~
5 equipment with special features, accessories, or equipment not
6 included in the base list price of such ~~tractor-or-farm~~
7 equipment as publicly advertised by the manufacturer of the
8 ~~tractor-or~~ equipment.

9 (3) It is deemed a violation of this section for a
10 manufacturer, factory branch or division, distributor,
11 distributor branch or division, wholesaler, or wholesale
12 branch or division, or officer, agent, or other representative
13 thereof:

14 (a) To refuse to deliver to any ~~tractor-or-farm~~
15 equipment dealer having a franchise or contractual agreement
16 for the retail sale of new ~~tractors-and-farm~~ equipment sold or
17 distributed by such manufacturer, factory branch or division,
18 distributor branch or division, or wholesale branch or
19 division, in reasonable quantities and within a reasonable
20 time after receipt of the dealer's order, any ~~tractor-or-item~~
21 ~~of-farm~~ equipment covered by such franchise or contract
22 specifically advertised or represented by such manufacturer,
23 factory branch or division, distributor, distributor branch or
24 division, wholesaler, or wholesale branch or division to be
25 available for immediate delivery. However, the failure to
26 deliver any such ~~tractor-or-item-of-farm~~ equipment is not
27 considered a violation of this section if such failure is due
28 to a prudent and reasonable restriction on the extension of
29 credit by the franchisor to the dealer, an act of God, a work
30 stoppage or delay due to a strike or labor difficulty, a bona
31 fide shortage of materials, a freight embargo, or another

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1 cause over which the manufacturer, distributor, or wholesaler,
2 or any agent thereof, has no control whatsoever.

3 (b) To coerce, compel, or attempt to coerce or compel
4 any ~~tractor-or-farm-equipment~~ dealer to enter into any
5 agreement, whether written or oral, supplementary to an
6 existing franchise with such manufacturer, factory branch or
7 division, distributor, distributor branch or division,
8 wholesaler, or wholesale branch or division, or officer,
9 agent, or other representative thereof; or to do any other act
10 prejudicial to such dealer by threatening to cancel any
11 franchise or contractual agreement existing between such
12 manufacturer, factory branch or division, distributor,
13 distributor branch or division, wholesaler, or wholesale
14 branch or division and such dealer. However, notice in good
15 faith to any ~~tractor-or-farm-equipment~~ dealer of such dealer's
16 violation or breach of any terms or provisions of such
17 franchise or contractual agreement does not constitute a
18 violation of this section if such notice is in writing and is
19 mailed by registered or certified mail to such dealer at her
20 or his current business address and such notice contains the
21 specific facts as to the dealer's violation or breach of such
22 franchise or contractual agreement.

23 (c)1. To terminate ~~or-cancel~~ the franchise or selling
24 agreement of any ~~tractor-or-farm-equipment~~ dealer without due
25 cause, as defined in subparagraph 2. The termination
26 ~~nonrenewal~~ of a franchise or selling agreement, without due
27 cause, constitutes an unfair termination ~~or-cancellation~~,
28 regardless of the specified time period of such franchise or
29 selling agreement. Except when the ground for such termination
30 ~~or-cancellation~~ falls within sub-subparagraph 2.c., such
31 manufacturer, factory branch or division, distributor,

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1 distributor branch or division, wholesaler, or wholesale
2 branch or division, or officer, agent, or other representative
3 thereof, shall notify a ~~tractor-or-farm-equipment~~ dealer in
4 writing of the termination ~~or-cancellation~~ of the franchise or
5 selling agreement of such dealer at least 180 90 days before
6 the effective date of the termination ~~or-cancellation~~, stating
7 the specific ground for such termination ~~or-cancellation~~. In
8 no event shall the contractual term of any such franchise or
9 selling agreement expire, without the written consent of the
10 ~~tractor-or-farm-equipment~~ dealer involved, prior to the
11 expiration of at least 180 90 days following such written
12 notice. During the 180-day 90-day period, either party may, in
13 appropriate circumstances, petition a court of competent
14 jurisdiction to modify such 180-day 90-day stay or to extend
15 it pending a final determination of such proceeding on the
16 merits. The court shall have authority to grant temporary,
17 preliminary, and final injunctive relief. Should a dealer cure
18 the claimed deficiency within the 180-day period, the
19 franchise or selling agreement shall not be terminated.

20 2. As used in this subparagraph, tests for determining
21 what constitutes due cause for a manufacturer or distributor
22 to terminate, ~~cancel, or refuse to renew~~ a franchise agreement
23 include whether the dealer:

24 a. Has transferred an ownership interest in the
25 dealership without the manufacturer's or distributor's
26 consent;

27 b. Has made a material misrepresentation in applying
28 for or in acting under the franchise agreement;

29 c. Has filed a voluntary petition in bankruptcy or has
30 had an involuntary petition in bankruptcy filed against her or
31 him which has not been discharged within 60 days after the

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1 filing, is in default under the provisions of a security
2 agreement in effect with the manufacturer or distributor, or
3 is in receivership;

4 d. Has engaged in unfair business or trade practices;

5 e. Has inadequately represented the manufacturer's or
6 distributor's products with respect to sales, service, or
7 warranty work;

8 f. Has inadequate and insufficient sales and service
9 facilities and personnel;

10 g. Has failed to comply with an applicable federal,
11 state, or local licensing law;

12 h. Has been convicted of a crime, the effect of which
13 would be detrimental to the manufacturer, distributor, or
14 dealership;

15 i. Has failed to operate in the normal course of
16 business for 10 consecutive business days or has terminated
17 her or his business;

18 j. Has relocated her or his place of business without
19 the manufacturer's or distributor's consent; or

20 k. Has failed to comply with the terms that are not in
21 conflict with this chapter or the terms of the dealership or
22 franchise agreement.

23 3. Before termination of the franchise or selling
24 agreement because of the dealer's failure to meet marketing
25 criteria or market penetration, the manufacturer, factory
26 branch or division, distributor, distributor branch or
27 division, wholesaler, or wholesale branch or division, or
28 officer, agent, or other representative thereof, shall provide
29 written notice of such intention at least 1 year in advance.
30 After such notice, the manufacturer or other entity issuing
31 the notice shall make good faith efforts to work with the

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dealer to gain the desired market share, including, without limitation, reasonably making available to the dealer an adequate inventory of new equipment and parts and competitive marketing programs. The manufacturer or other entity, at the end of the 1-year notice period, may terminate or elect not to renew the agreement only upon further written notice specifying the reasons for determining that the dealer failed to meet reasonable marketing criteria or market penetration. Such written notice must specify that termination is effective 90 days from the date of the notice. Either party may petition the court pursuant to subparagraph (c)1. for the relief specified in such subparagraph. Should a dealer cure the claimed deficiency within the 90-day period, the franchise or selling agreement shall not be terminated.

(d) To resort to or use any false or misleading advertisement in connection with its ~~her-or-his~~ business as such manufacturer, factory branch or division, distributor, distributor branch or division, wholesaler, or wholesale branch or division, or officer, agent, or other representative thereof.

(e) To offer to sell or to sell any new ~~tractor-or~~ ~~item-of~~ farm equipment, or parts or accessories therefor, to any other ~~tractor-or-farm-equipment~~ dealer at a lower actual price therefor than the actual price offered to any other ~~tractor-or-farm-equipment~~ dealer for the same model ~~tractor-or~~ farm equipment identically equipped or to utilize any device, including, but not limited to, sales promotion plans or programs, which results in such lesser actual price or results in a fixed price predetermined solely by the manufacturer or distributor. However, the provisions of this paragraph do not apply to sales to a ~~tractor-or-farm-equipment~~ dealer for

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1 resale to any unit or agency of the United States Government,
2 the state or any of its political subdivisions, or any
3 municipality located within this state. Further, the
4 provisions of this paragraph do not apply so long as a
5 manufacturer, distributor, or wholesaler, or any agent
6 thereof, sells or offers to sell such new ~~tractor-or-farm~~
7 equipment, parts, or accessories to all of its her-or-his
8 franchised ~~tractor-or-farm-equipment~~ dealers at an equal
9 price.

10 (f) To willfully discriminate, either directly or
11 indirectly, in price, programs, or terms of sale offered to
12 franchisees, when the effect of such discrimination may be to
13 substantially lessen competition or to give to one holder of a
14 franchise any economic, business, or competitive advantage not
15 offered to all holders of the same or similar franchise.

16 (g) To prevent or attempt to prevent, by contract or
17 otherwise, any ~~tractor-or-farm-equipment~~ dealer from changing
18 the capital structure of her or his dealership or the means by
19 or through which the dealer finances the operation of her or
20 his dealership, provided the dealer at all times meets any
21 reasonable capital standards agreed to between the dealership
22 and the manufacturer, distributor, or wholesaler and provided
23 such change by the dealer does not result in a change in the
24 executive management of the dealership.

25 (h) To prevent or attempt to prevent, by contract or
26 otherwise, any ~~tractor-or-farm-equipment~~ dealer or any
27 officer, member partner, or stockholder of any ~~tractor-or-farm~~
28 ~~equipment~~ dealer from selling or transferring any part of the
29 interest of any of them to any other person or persons or
30 party or parties. However, no dealer, officer, partner, or
31 stockholder has the right to sell, transfer, or assign the

Bill No. CS for CS for SB 2480Amendment No. 1

323454

1 franchise or power of management or control thereunder without
2 the written consent of the manufacturer, distributor, or
3 wholesaler, except that such consent may not be unreasonably
4 withheld.

5 (i) To impose, directly or indirectly, unreasonable
6 restrictions on the dealer relative to transfer, renewal,
7 termination, location, or site control.

8 (j) To prevent a dealer from having an investment in
9 or holding a dealership contract for the sale of competing
10 product lines or makes of equipment, or to require a dealer to
11 provide separate facilities for competing product lines or
12 makes of equipment.

13 (k) {i} To obtain money, goods, services, anything of
14 value, or any other benefit from any other person with whom
15 the ~~tractor-or-farm-equipment~~ dealer does business or employs
16 on account of or in relation to the transactions between the
17 dealer, the franchisor, and such other person.

18 (l) {j} To require a ~~tractor-and-farm-equipment~~ dealer
19 to assent to a release, assignment, novation, waiver, or
20 estoppel which would relieve any person from liability imposed
21 by ss. 686.40-686.418.

22 (4) It is deemed a violation of this section for a
23 ~~tractor-or-farm-equipment~~ dealer:

24 (a) To require a retail purchaser of a new ~~tractor-or~~
25 ~~item-of-farm~~ equipment, as a condition of sale and delivery of
26 the ~~tractor-or~~ equipment, also to purchase special features,
27 appliances, equipment, parts, or accessories not desired or
28 requested by the purchaser. However, this prohibition does not
29 apply to special features, appliances, equipment, parts, or
30 accessories which are already installed when the ~~tractor-or~~
31 ~~item-of-farm~~ equipment is received by the dealer from the

Bill No. CS for CS for SB 2480Amendment No. 1

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1 manufacturer, distributor, or wholesaler of such ~~tractor-or~~
2 equipment.

3 (b) To represent and sell as new and unused any
4 ~~tractor-or item-of-farm~~ equipment which has been used and
5 operated for demonstration or other purposes without stating
6 to the purchaser prior to the sale the approximate amount of
7 use the equipment ~~tractor-or-item-of-farm-machinery~~ has
8 experienced or undergone.

9 (c) To resort to or use any false or misleading
10 advertisement in connection with her or his business as such
11 ~~tractor-or-farm-equipment~~ dealer.

12 Section 10. Section 686.418, Florida Statutes, is
13 amended to read:

14 686.418 Effect of act on other remedies.--Sections
15 686.40-686.418 are supplemental to and do not preempt local
16 ordinances dealing with prohibited or unlawful conduct in the
17 manufacturing, distribution, wholesaling, advertising, or sale
18 of ~~tractors-and-other-items-of-farm~~ equipment if such
19 ordinances are not inconsistent with such sections.

20 Section 11. Subsection (5) of section 316.515, Florida
21 Statutes, is amended to read:

22 316.515 Maximum width, height, length.--

23 (5) IMPLEMENTS OF HUSBANDRY, AGRICULTURAL TRAILERS,
24 SAFETY REQUIREMENTS.--Notwithstanding any other provisions of
25 law, straight trucks, agricultural tractors, and cotton module
26 movers, not exceeding 50 feet in length, or any combination of
27 up to and including three implements of husbandry including
28 the towing power unit, and any single agricultural trailer,
29 with a load thereon or any agricultural implements attached to
30 a towing power unit not exceeding 130 inches in width, or a
31 self-propelled agricultural implement or an agricultural

Bill No. CS for CS for SB 2480Amendment No. 1

323454

tractor not exceeding 130 inches in width, is authorized for the purpose of transporting peanuts, grains, soybeans, cotton, hay, straw, or other perishable farm products from their point of production to the first point of change of custody or of long-term storage, and for the purpose of returning to such point of production, or for the purpose of moving such tractors, movers, and implements from one point of agricultural production to another, by a person engaged in the production of any such product or custom hauler, if such vehicle or combination of vehicles otherwise complies with this section. Such vehicles shall be operated in accordance with all safety requirements prescribed by law and Department of Transportation rules. The Department of Transportation may issue overlength permits for cotton module movers greater than 50 feet but not more than 55 feet in overall length.

Section 12. This act shall take effect July 1, 2004.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause delete

and insert:

A bill to be entitled

An act relating to agricultural equipment;
amending s. 686.40, F.S.; providing a popular
name; amending s. 686.401, F.S.; clarifying
intent of the Agricultural Equipment
Manufacturers and Dealers Act to provide for
regulation of the conduct of manufacturers,
distributors, and dealers of equipment

Bill No. CS for CS for SB 2480Amendment No. 1

323454

1 primarily designed for or used in agriculture;
2 amending s. 686.402, F.S.; revising and adding
3 definitions; amending s. 686.403, F.S.;
4 clarifying provisions relating to application;
5 amending s. 686.405, F.S.; providing that it is
6 unlawful to deny, delay payment for, or
7 restrict warranty claims under certain
8 circumstances; providing for audit of warranty
9 claims; amending s. 686.406, F.S.; clarifying
10 provisions relating to surplus parts; amending
11 s. 686.407, F.S.; providing requirements for
12 the establishment of a new dealership or
13 relocation of a current dealership within a
14 certain area; providing requirements for the
15 sale or lease of new equipment; amending s.
16 686.409, F.S.; clarifying provisions relating
17 to compensation for inventory under certain
18 circumstances; amending s. 686.413, F.S.;
19 providing additional unlawful acts and
20 practices in the conduct of the manufacturing,
21 distribution, wholesaling, franchising, sale,
22 and advertising of equipment; providing
23 requirements for termination of a franchise or
24 selling agreement under certain circumstances;
25 amending s. 686.418, F.S.; clarifying
26 provisions relating to the effect of the act on
27 local ordinances; amending s. 316.515, F.S.;
28 revising the criteria for determining whether
29 agricultural equipment qualifies for an
30 exemption from maximum width and length limits;
31 providing an effective date.

Bill No. CS for CS for SB 2480Amendment No. 1a

330780

CHAMBER ACTION

SenateHouse1
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Senator Alexander moved the following **amendment to amendment**
(323454):

Senate Amendment

On page 2, line 14, through
page 5, line 28, delete those lines

and insert: used ~~tractors-and-farm~~ equipment to the consuming
public, but does not include:

~~(a)--A-receiver,-trustee,-administrator,-executor,-
personal-representative,-guardian,-or-other-person-appointed
by-or-acting-under-judgment,-decree,-or-order-of-any-court-~~

(a)~~(b)~~ A public officer while performing her or his
duties as such officer.

(b)~~(c)~~ A person making casual or isolated sales of her
or his own ~~tractors-or-items-of-farm~~ equipment ~~not-subject-to~~
~~sales-tax-under-the-laws-of-this-state.~~

(c)~~(d)~~ A person engaged in the auction sale of
~~tractors-and-farm~~ equipment.

(d)~~(e)~~ A dealer in used ~~tractors-and-farm~~ equipment.

(e) A mass-market retailer.

Bill No. CS for CS for SB 2480Amendment No. 12

330780

1 (2) "Dealership" means the business of selling or
2 attempting to effect the sale by a dealer of new equipment or
3 the right conferred by written or oral agreement with the
4 manufacturer, distributor, or wholesaler, for a definite or
5 indefinite period of time, to sell or attempt to effect the
6 sale of new equipment.

7 (3) (1) "Distributor" or "wholesaler" means any person,
8 firm, association, corporation, or company that sells or
9 distributes new tractors-and-farm equipment to tractor-or-farm
10 equipment dealers and that maintains distributor
11 representatives within this state.

12 (4) (2) "Distributor branch" means a branch office
13 maintained by a distributor or wholesaler which sells or
14 distributes new tractors-and-farm equipment to tractor-or-farm
15 equipment dealers.

16 (5) (3) "Distributor representative" means a
17 representative employed by a distributor, distributor branch,
18 or wholesaler.

19 (6) "Farm Equipment" means those tractors or farm
20 implements which are primarily designed for or used use in
21 agriculture. Equipment designed for or used in off-road
22 construction, mining, utility, and industrial purposes is not
23 included in this definition.

24 (7) (4) "Factory branch" means a branch office
25 maintained by a manufacturer which manufactures and assembles
26 tractors-and-farm equipment for sale to distributors of
27 tractors or to-farm-equipment dealers or which is maintained
28 for directing and supervising the representatives of the
29 manufacturer.

30 (8) (5) "Factory representative" means a representative
31 employed by a manufacturer or factory branch for the purpose

Bill No. CS for CS for SB 2480Amendment No. 1a

330780

1 of making or promoting the sale of ~~tractors-and-farm~~ equipment
2 or for supervising, servicing, introducing, or contracting
3 with ~~tractor-or-farm-equipment~~ dealers or prospective dealers.

4 ~~(9)~~(7) "Franchise" means a contract or agreement,
5 either expressed or implied, whether oral or written, for a
6 definite or indefinite period of time in which a manufacturer,
7 distributor, or wholesaler grants to a ~~tractor-or-farm~~
8 ~~equipment~~ dealer permission to use a trade name, service mark,
9 trademark, or related characteristic and in which there is a
10 common interest or community of interest in the marketing of
11 ~~tractors-or-farm~~ equipment or services related thereto at
12 wholesale or retail, whether by leasing, sale, or otherwise.

13 ~~(10)~~(8) "Franchisee" means a ~~tractor-or-farm-equipment~~
14 dealer to whom a franchise is offered or granted.

15 ~~(11)~~(9) "Franchisor" means a manufacturer,
16 distributor, or wholesaler who grants a franchise to a ~~tractor~~
17 ~~or-farm-equipment~~ dealer.

18 ~~(12)~~(10) "Fraud" means and includes actual fraud or
19 constructive fraud as normally defined, in addition to the
20 following:

21 (a) A misrepresentation in any manner, whether
22 intentionally false or arising from gross negligence, of a
23 material fact.

24 (b) A promise or representation not made honestly and
25 in good faith.

26 (c) An intentional failure to disclose a material
27 fact.

28 (d) Any artifice employed to deceive another.

29 ~~(13)~~(11) "Manufacturer" means any person engaged in
30 the business of manufacturing or assembling new and unused
31 ~~tractors-and-farm~~ equipment.

Bill No. CS for CS for SB 2480Amendment No. 1a

330780

1 ~~(14)~~~~(12)~~ "New ~~tractor-or-farm~~ equipment" means a
2 ~~tractor-or item-of-farm~~ equipment which has not been
3 previously sold to and put into regular use or service by any
4 person, except a distributor, wholesaler, or ~~tractor-or-farm~~
5 ~~equipment~~ dealer for resale.

6 ~~(15)~~~~(13)~~ "Person" means a natural person, corporation,
7 association, partnership, trust, or other business entity and,
8 in the case of a business entity, includes any other entity in
9 which the business entity has a majority interest or which it
10 effectively controls, as well as the individual officers,
11 directors, and other persons in active control of the
12 activities of each such entity.

13 ~~(16)~~ "Relevant market area" means the geographic area
14 for which a dealer is assigned responsibility for selling or
15 soliciting or advertising the sale of equipment under the
16 terms of a franchise.

17 ~~(17)~~~~(14)~~ "Sale" means and includes the issuance,
18 transfer, agreement for transfer, exchange, pledge,
19 hypothecation, or mortgage in any manner or form, whether by
20 transfer in trust or otherwise, of any ~~tractor-or-item-of-farm~~
21 equipment or interest therein, or of any franchise related
22 thereto, for a consideration and any option, subscription or
23 other contract, or solicitation, looking to a sale, or offer
24 or attempt to sell in any form, whether in oral or written
25 form for a consideration.

26 ~~(18)~~ "Termination" means the termination,
27 cancellation, nonrenewal, or noncontinuation of a contract or
28 agreement.

29 ~~(19)~~~~(15)~~ "Tractor" means a vehicle that is operated
30 principally upon a farm, grove, or orchard in connection with
31 agriculture ~~agricultural-or-horticultural-pursuits.~~

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Amendment No. 16



CHAMBER ACTION

House

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(3) Sections 686.40-686.418 apply to all continuing contracts-now-in-effect-which-have-no-expiration-date-and-to all other contracts entered into, renewed, or amended after July 1, 2004 or-renewed-after-July-1,-1984.

Bill No. CS for CS for SB 2480

Amendment No. 1c

970684

CHAMBER ACTION

SenateHouse.
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Senator Alexander moved the following amendment to amendment
(323454):

Senate Amendment

On page 14, lines 9-16, delete those lines

and insert:

(d) The names of the dealer and principals in the new
or relocated dealership.

(7) A manufacturer, distributor, or wholesaler may
lease new equipment for use within the state. If the
manufacturer, distributor, or wholesaler makes a direct sale
or lease of equipment, he or she shall pay to the dealer
located within the relevant market area a commission of not
less than 7 percent of the sale or lease price of the
equipment. This payment shall cover any

Bill No. SB 2030

Amendment No. _____



951600

CHAMBER ACTION

SenateHouse.
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11 Senator *Yeller* Smith moved the following **amendment to amendment**
12 (444734):
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Senate Amendment

On page 3, line 24, after the comma

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16
17 insert: if the applicant meets the criteria in s. 322.292,
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